

**IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

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**TO THE HONORABLE MEMBERS OF THE INTER-AMERICAN COMMISSION ON  
HUMAN RIGHTS, ORGANIZATION OF AMERICAN STATES**

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**PETITION ALLEGING VIOLATIONS OF THE HUMAN RIGHTS OF EMILIO GUTIÉRREZ  
SOTO AND OSCAR EMILIO GUTIÉRREZ SOTO BY MÉXICO**

**EMILIO GUTIÉRREZ SOTO, OSCAR EMILIO GUTIÉRREZ SOTO, REPORTERS  
SANS FRONTIÈRES, LAS AMERICAS IMMIGRANT ADVOCACY CENTER,  
PASTORAL OBRERA, MEXICANOS EN EXILIO, ALIANZA MEXICANA, and  
ANNUNCIATION HOUSE, INC.**

**Against**

**UNITED STATES OF MÉXICO**

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## I. INTRODUCTION

1. The petitioners, Emilio Gutiérrez Soto, Las Americas Immigrant Advocacy Center, Annunciation House, Pastoral Obrera, Alianza Mexicana, Mexicanos en Exilio, and Reporters Sans Frontières file this Petition and open this case against the Mexican state pursuant to Articles 44 through 51 of the American Convention on Human Rights (the Convention). The Mexican state has failed to protect Petitioner E. Gutiérrez and O. Gutiérrez with respect to the following guaranteed rights under the Convention: the right to life and personal integrity (Arts. 4 and 5); the right to freedom of expression (Art. 13); the right to legal due process (Art. 8); the right to judicial protection and guarantees (Art. 25); the right to freedom of movement (Art. 22); the rights of the child (Art. 19); and the need of the state to respect and guarantee the rights of persons within its jurisdiction (Art. 1.1). Petitioners come now and respectfully request the Commission to open this Petition, declare this case admissible, declare that the Mexican state has violated the American Convention on Human Rights, and to issue a recommendation that resolves these violations and their damage in their entirety.

## II. PETITIONERS

2. Emilio Gutiérrez Soto (Petitioner E. Gutiérrez) was born in Nuevo Casas Grandes, Chihuahua, México in 1963 and continues to be a Mexican national. He finished his studies in that city and, soon afterward, started working as a journalist for *El Diario*. For almost thirty years, Emilio Gutiérrez has worked in various aspects of journalism. He has worked in print media as both a correspondent and a photographer, handled administrative and advertisement operations for newspapers, and worked as a radio reporter. Mr. Gutiérrez has worked for a variety of news organizations including *El Diario del Noroeste*, *El Universal*, *El Fronterizo*, and various radio stations. He has worked in various capacities for *El Diario del Noroeste*, based in Nuevo Casas Grandes since 1983. Most recently, he was a correspondent and office manager in the Ascensión office of *El Diario del Noroeste*. Petitioner E. Gutiérrez currently resides in the United States of America with his son out of fear of further retaliation by the military for his stance regarding military violence in his home country. He still has family living both in Nuevo Casas Grandes and Ciudad Juárez, Chihuahua. He has won several awards for his work including the Courage Award from the Canadian organization, Journalists for Free Expression.

3. Oscar Emilio Gutiérrez Soto (Petitioner O. Gutiérrez) was born in June 3, 1993 in Cd. Juárez, Chihuahua, and is the son of Petitioner E. Gutiérrez. He is a Mexican national. He lived in Ascensión, Chihuahua from 1999 to 2008. In June 2008, Petitioner O. Gutiérrez had to leave his family and his home country at age fifteen because of persecution by the Mexican military against his father. Petitioner O. Gutiérrez currently resides in the United States of America out of fear of further retaliation by the military against him and his father because of his father's public stance regarding military violence in his home country. Petitioner O. Gutiérrez left his studies, family, and childhood in México when he sought asylum in the United States.

4. Las Americas Immigrant Advocacy Center (Las Americas) is a 24-year-old, non-profit based in El Paso, Texas, United States. The organization is dedicated to the legal representation of and advocacy for low-income immigrants, including refugees, and battered women and children on the U.S.-Mexico border. Since 2008, Las Americas has been faced with an unprecedented challenge: a flow of refugees fleeing the drug war in Northern Mexico. In response, Las Americas launched the Mexican Asylum Program that seeks to help these families

fearing for their lives as the neighboring state of Chihuahua descends into chaos. Las Americas joins this petition on behalf of its own clients with the hope that this situation will be treated as the humanitarian crisis that it is.

5. Annunciation House, Inc. is an organization that for more than 33 years has worked with immigrants on the El Paso/Juarez border, providing shelter to immigrants and refugees crossing into the United States. Annunciation House operates three houses of hospitality in El Paso and has hosted in excess of 110,000 individuals during the past 33 years. During the past several years, many individuals and families fleeing the violence in Mexico, primarily from Juarez, have been received and hosted in the houses of hospitality. In addition to its work of hospitality, Annunciation House does considerable border education and immigrant rights advocacy.

6. Reporters Sans Frontières (Reporters Without Borders) is an international non-governmental organization based in Paris, France that focuses on the following areas of work world-wide: (1) defending journalists and media assistants persecuted for doing their job and exposing their mistreatment and torture; (2) fighting censorship and laws that undermine press freedom; and (3) working to improve the safety of journalists. Reporters Without Borders has researchers and correspondents working throughout México and has witnessed the rise of violence against journalists in that country, particularly in the last six years. Reporters Without Borders has supported Petitioners E. Gutiérrez and O. Gutiérrez since they first reported the aggressions taken against them by the Mexican military.

7. The Centro de Pastoral Obrera de Cd. Juárez, AC, is a non-profit organization of the Diocese of Cd. Juárez, founded in 2001. The organization conducts analysis of human rights, and provides workers in Cd. Juárez with legal counsel and education. The Centro works with low-income workers and particularly with workers in the *maquiladora* industry. As a response to the situation of violence that has plagued Cd. Juárez starting in 2008, the Centro de Pastoral Obrera widened its services and is working to support the victims of violence, of public insecurity, and of gender-based violence. This violence has affected Mr. Gutierrez in many ways. It has derailed his career, torn his family apart, and forced him to lose income so that he can properly support his family. For these reasons, it is of particular interest to the Centro that Mr. Gutiérrez' case make precedent at the international level, demonstrating the ineffectiveness of local resources to achieve justice and to protect Mexican citizens who are merely doing their job and exercising their right to freedom of speech. It is also important that the international community understand the risk that journalists and human rights defenders are confronting in México; particularly in Cd. Juárez and Chihuahua.

8. Alianza Mexicana is a non-profit organization based in Houston, Texas, United States. The organization has focused its efforts on the protection, promotion, defense, and exercise of human rights of the Mexican origin population. It conducts community education and outreach on human rights concerns in community forums, legal clinics and referrals and civic engagement activities. Last year, in response to member concerns and specific cases brought to its attention of the dangers to personal security and public safety posed by the current armed conflict between Mexico and drug cartels, the organization launched a community-based campaign calling on the United States to grant Temporary Protected Status to Mexican nationals living within its borders. The organization has continued to assist Mexican immigrants and exiles seeking relief from violent incidents occurring in Mexico. Alianza Mexicana joins the petition on behalf of its members and Mexican immigrants as part of its efforts to protect the human rights of all persons in search of a safe haven in the United States.

9. Mexicanos en Exilio (Mexicans in Exile) is an association of persons in El Paso who have fled México for fear of their lives and have filed for political asylum in the United States. Among others, the group includes: journalist Ricardo Chavez Aldana; Juan Fraire Escobedo, son of deceased human rights advocate Marisela Escobedo; Saul Reyes Salazar, brother of the deceased human rights advocate Josefina Reyes Salazar; Marisol Valles, former police chief in the Valle de Juárez; and Juárez-based human rights advocate Cipriana Jurado.

### III. STATEMENT OF FACTS

10. In December of 2006, newly elected Mexican President Felipe Calderón declared war against drug cartels that were taking control of various parts of México. In March 2008, as part of this war on drugs, President Calderón initiated Operativo Conjunto Chihuahua in which the federal government deployed over 2,000 soldiers to points throughout the northern Mexican state.<sup>1</sup> As part of this effort the Mexican military took over many of the functions of local law enforcement agencies. In March 2009, the government sent another 5,332 soldiers to the state of Chihuahua to assume control of the local police in Ciudad Juárez.<sup>2</sup>

11. The increase in military presence in Chihuahua communities, such as Ascensión, was accompanied by a severe increase of human rights abuses committed by the military. The number of complaints filed with the National Commission on Human Rights (CNDH – *Comisión Nacional de los Derechos Humanos*) regarding military human rights abuses increased from 182 in 2006 to 367 in 2007 to 1,230 in 2008 and 1,791 in 2009.<sup>3</sup>

12. Most abuses by the Mexican military are met with a high level of impunity. Complaints made to civil and criminal bodies are often ignored or referred to military jurisdiction, where little to no investigation or prosecution occurs. This esteemed Commission has held that the Mexican military justice system lacks “by definition, the necessary independence and autonomy to carry out an impartial investigation of human rights violations allegedly committed by members of the armed forces.... [T]he investigation by the [military] prosecutor’s office of human rights violations allegedly perpetrated by Mexican military personnel is itself a violation of the American Convention.”<sup>4</sup>

13. The CNDH has also failed to respond effectively, or at all, to complaints made regarding military abuses. For example, of the 1,230 complaints made to the CNDH regarding Mexican

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<sup>1</sup> Department of Defense, *Efectivos militares refuerzan las acciones en contra de la delincuencia organizada en el estado de Chihuahua* (press release), March 27, 2008, available at [www.presidencia.gob.mx/prensa/?contenido=34517](http://www.presidencia.gob.mx/prensa/?contenido=34517).

<sup>2</sup> Jorge Alejandro Medellín, *Juárez bajo sitio militar*, El Universal, March 1, 2009, available at <http://www.eluniversal.com.mx/nacion/166104.html>.

<sup>3</sup> Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C., *Human Rights Under Seige: Public Security and Criminal Justice in Mexico*, p. 15, September 2008, available at <http://www.globalexchange.org/countries/americas/mexico/CentroProdhHumanRightsUnderSiege.pdf>; Amnesty International, *New Reports of Human Rights Violations by the Military*, p. 9, December, 2009, available at <http://www.amnesty.org/en/library/asset/AMR41/058/2009/es/e1a94ad6-3df1-4724-a545-f0b93f39af69/amr410582009en.pdf>; Enrique Méndez and Roberto Garduño, *Hay más quejas por abusos de militares desde que participan en lucha antinarcos*, February 24, 2010, available at <http://www.jornada.unam.mx/2010/02/24/index.php?section=politica&article=011n1pol>.

<sup>4</sup> *Miguel Orlando Muñoz Guzman v. México*, Case No. 12.130, Inter-Am. C.H.R., Report No. 2/06 (Merits), February 28, 2006, para. 85.

military human rights abuses in 2008, the National Commission only made recommendations in 14 of those cases.<sup>5</sup>

14. The increased federal offensive in México has made the country one of the most dangerous places in the world to be a journalist. Seventy-five journalists have died in México over the last 11 years and 13 have gone missing since 2003.<sup>6</sup> Many journalists have left the country for fear of threats.

15. Petitioner Emilio Gutiérrez Soto worked as a journalist for the *El Diario del Noroeste* in Ascensión, Chihuahua, México until he and his son were forced to leave México in 2008. During his time working for the publication, he generally published stories involving sports and politics. He also worked in advertising for the paper.

#### **A. Aggressions Against Petitioner E. Gutiérrez In 2005.**

16. Between December 2004 and January 2005, Petitioner E. Gutiérrez wrote several articles that were critical of military abuses in the area of Nuevo Casas Grandes and Ascensión, Chihuahua. On January 29, 2005, Petitioner E. Gutiérrez published a small article for *El Diario* on actions of the Mexican military in a recent assault on a small hotel called "La Estrella."<sup>7</sup> In his article, Mr. Gutiérrez reported that five of the robbers involved in the assault were soldiers dressed in green uniforms and that one of the robbers was dressed in desert camouflage. The article also names the commander of this small group of robbers, Mabeto Amaya Sánchez.

17. On February 8, 2005, Colonel Filadelfo Martínez Piedra, from the Mexican army regimen based in Nuevas Casas Grandes, called Petitioner E. Gutiérrez on his cellular telephone number and demanded that he come immediately to Hotel Miami located in Ascensión. During this telephone call, Colonel Martínez told Mr. Gutiérrez: "Come or we will come for you."

18. Petitioner E. Gutiérrez complied with the Colonel's orders, and went directly to the Hotel along with his 11-year-old son. The hotel was surrounded by soldiers and officers. Mr. Gutiérrez went into the hotel restaurant.

19. Colonel Martínez introduced Petitioner E. Gutiérrez to General Alfonso García Vega, head of the Fifth Military Zone, and said "Look, General, the son of a whore who has written all kinds of idiocy has arrived." General García responded, "So, you are the son of a whore, who is lowering our prestige. You son of a fucking whore, you are denigrating us and my boss. The minister in Mexico is extremely bothered by your fucking lies, idiot."

20. General García Vega then told him, "You have written three articles full of lies. There will not be a fourth."

21. During his conversation with General García, the other soldiers cursed him and continued to intimidate him. Mr. Gutiérrez did not feel he was free to leave. He felt that he was about to be kidnapped and begged for pardon so that they would let him go.

22. Finally, Colonel Martínez told him that he was under surveillance and that he "should not fuck up."

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<sup>5</sup> Amnesty International, *New Reports of Human Rights Violations by the Military*, p. 9 (December 2009), available at <http://www.amnesty.org/en/library/asset/AMR41/058/2009/en/e1a94ad6-3df1-4724-a545-f0b93f39af69/amr410582009en.pdf>.

<sup>6</sup> Reporters Without Borders, *Veracruz Journalist Shot Dead in Home With Wife and Son*, June 21, 2011, available at <http://en.rsf.org/mexico-veracruz-journalist-shot-dead-in-21-06-2011,40499.html>.

<sup>7</sup> See Ex. A.

23. After talking with his editor, José Martínez Valdez, Mr. Gutiérrez filed a third-person account of the confrontation with the military officials in *El Diario del Noroeste* on February 10, 2005.<sup>8</sup>

24. On February 11, 2005, Petitioner E. Gutiérrez filed a complaint with the Mexican National Commission of Human Rights by fax (file number 2005/694/CHIH/5/SQ).<sup>9</sup>

25. On February 15, 2005, Mr. Gutiérrez filed a complaint with the Public Prosecutor (*Ministerio Público*) in Nuevos Casas Grandes (file number, E-202/2005).

26. On February 16, 2005, Attorney Daniel Luna Gonzalez, representative of Public Prosecutor of Nuevos Casas Grandes, submitted Petitioner E. Gutiérrez' original complaint to Maria Elisa Victoriana Hernandez Ariztegui, regional coordinator of the Public Prosecutor for the Judicial District of Galeana.<sup>10</sup>

27. On May 9, 2005, CNDH officials contacted Petitioner E. Gutiérrez in reference to file number 2005/694/CHIH/5/SQ and asked what he knew about his complaint with the Public Prosecutor. Mr. Gutiérrez informed them he had heard nothing regarding the investigation.

28. On May 13, 2005, Attorney Hernandez Ariztegui solicited the chief of investigations to designate personnel from the Public Prosecutor to investigate the complaint.

29. On May 30, 2005, three and a half months after Petitioner E. Gutiérrez filed the original complaint with the Chihuahua Public Prosecutor, Attorney Hernandez Ariztegui finally requested that the Commander of the 35<sup>th</sup> Infantry Battalion of Nuevos Casas Grandes confirm whether or not Col. Martínez and General García did in fact belong to the Mexican military.

30. On May 13, 2005, the CNDH officials requested information from the Public Prosecutor of Chihuahua regarding complaint 202/2005. The Liaison Department of the Attorney General's office, Maria Elisa Victoriana Hernandez Aristequi, sent notice 097/2005 in response.

31. On September 21, 2005, the CNDH sent correspondence to Attorney General for the State of Chihuahua, Patricia Lucila Gonzalez Rodriguez, and to the General Prosecutor of Military Justice, Brigade General and Attorney Jaime A. López Portillo Robles Gil, notifying them that the investigation of file 202/2005 did not fulfill the obligations required by Mexican law and that the CNDH was proposing that the parties undergo a process of conciliation. The proposed conciliation required the following: (1) that the parties complete the investigation of complaint E-202/2005; and (2) that the Comptroller of Internal Affairs of the Attorney General's office of the state of Chihuahua initiate an administrative proceeding to investigate and make conclusions regarding the investigation of complaint 202/2005 in the Public Safety Ministry.<sup>11</sup>

32. On January 31, 2006, Attorney Farah Gebara again sent correspondence to Petitioner E. Gutiérrez in which he stated that: (1) the Inspection and Internal Comptroller General of the Army and Air Force carried out an investigation, the result of which, was that no military personnel were found to be responsible for the incident; (2) a memorandum was circulated by the Comptroller General of the Army to the Command of the Fifth Military Zone instructing them to avoid acts that may contain intimidation and interference with freedom of expression; and (3) the Prosecutor for Human Rights of the Attorney General's office of Chihuahua accepted the CNDH's correspondence regarding conciliation and instructed the state Attorney General of the

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<sup>8</sup> See Ex. B.

<sup>9</sup> It appears that CNDH incorrectly recorded the name of one of the officers. In correspondence to Petitioner Gutierrez from CNDH made on September 21, 2005, Colonel Filadelfo Martínez Pedra is referred to as "Col. Idelfonso." Ex. C.

<sup>10</sup> See Ex. C.

<sup>11</sup> Ex. C.

North Zone to facilitate the investigation of complaint 202/2005, and to determine the responsible representative of the state Attorney General in charge of this complaint.

33. Petitioner E. Gutiérrez was not involved in the conciliation process, never received any other correspondence from any of the reporting agencies, and never heard anything regarding a potential resolution of the investigations carried out by the Inspection and Comptroller General of the Military and Air Force and the Internal Comptroller of the Attorney General of Justice in the state of Chihuahua.

34. The correspondence sent by the CNDH on January 31, 2006, failed to inform Petitioner E. Gutiérrez of the results or status of any of these investigations and failed to even provide him the name of the personnel in charge of the investigation of complaint 202/2005 in the state Attorney General office of the North Zone.

35. Petitioner E. Gutiérrez did not hear more from any of the prosecuting agencies regarding complaint 202/2005 until June 3, 2011. At that time, after six years of requests by Mr. Gutiérrez as explained below, the CNDH sent another request for information to the Chihuahua Attorney General office. The case has still not been resolved, and no additional information has been provided to Petitioner E. Gutiérrez.

#### **B. Aggressions Made Against Petitioner E. Gutiérrez and Petitioner O. Gutiérrez In 2008 And Their Flight From México.**

36. Petitioner E. Gutiérrez was disappointed in the lack of response to the investigations by both federal and state agencies. Fearing for his life, Petitioner E. Gutiérrez refrained from publishing any further articles regarding the Mexican military or other governmental agencies.

37. Nonetheless, despite the fact that Petitioner E. Gutiérrez refrained from publishing any potentially dangerous articles in 2005, 2006, 2007, and 2008, he again became the target of Mexican army intimidation.

38. As mentioned above, in March of 2008, Operativo Conjunto Chihuahua brought thousands of military forces into the state of Chihuahua. In the wake of this rapid increase in federal forces, both state and federal human rights organizations received a spike in human rights complaints involving federal forces.<sup>12</sup> Military aggression was also particularly focused on journalists and human rights defenders that had been critical of the government over the preceding three years. Between March and July of 2008, reports arose from various towns and cities in northern Chihuahua of military intimidation, detention, and aggression against known human rights advocates.<sup>13</sup>

39. Early in the morning on May 6, 2008, approximately 50 Mexican soldiers busted into Petitioner E. Gutiérrez' home in Ascensión and aimed their arms at both him and his son, who was sleeping at the time. Mr. Gutiérrez, fearing for his life, yelled that he was from the press and that he worked for *El Diario*. The officers separated him from his son and told him that they were searching his home for guns and drugs. They spent forty minutes searching all the rooms in the house. Finding nothing, the officers left. Upon leaving, one of the soldiers told Mr. Gutiérrez threateningly, "Behave well."

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<sup>12</sup> See Ex. D.

<sup>13</sup> See Ex. E.

40. On May 9, 2008, after several days contemplating his next steps, Petitioner E. Gutiérrez filed a complaint with Attorney José Luis García Chávez of the Public Prosecutor in Ascensión, Chihuahua.<sup>14</sup>

41. On May 15, 2008, Petitioner E. Gutiérrez filed a new complaint with the CNDH by fax with file number CNDH/5/2008/2331/Q.

42. On May 20, 2008, several investigators from the Chihuahua Public Prosecutor's Office arrived at Petitioner E. Gutiérrez' home to assess his home. The inspectors did not interview anyone. They did not even enter his house. The inspectors merely looked at the remains of his broken door and left about 20 minutes later.

43. On June 14, 2008, Petitioner E. Gutiérrez was working in the garden in front of his home when he noticed two pickup trucks filled with several persons in military uniforms pass slowly by his home. Both pickup trucks passed by his house continually for about an hour. After having breakfast, Mr. Gutiérrez drove to the office of *El Diario* in Ascensión. One of the trucks followed him to his office. When he left the office around 12:00 p.m., the same pickup truck that was parked outside his home in the morning followed him. Mr. Gutiérrez went to a local store to buy groceries. Worried that a vehicle was still following him, Mr. Gutiérrez called his friend who came to the back of the store (the *bodega*) where he met Mr. Gutiérrez. The two of them then returned to the home of Petitioner E. Gutiérrez' friend. Mr. Gutiérrez made sure his son was safe. He did not return to his house because he feared that the persons following him were waiting for him there.

44. Around 8:00 p.m. in the evening of that same day, Petitioner E. Gutiérrez received a call from a female friend, who said she needed to meet with him. The woman arrived at Petitioner E. Gutiérrez' friend's home where he was staying. She informed him that she was in a relationship with a military officer. She said she overheard the officer say to another officer that the Mexican military was trying to kill Mr. Gutiérrez. She then told him that he should leave because they would kill him if he stayed.

45. Fearing for his life and the life of his son, Petitioner E. Gutiérrez gathered his son and went to a ranch west of Ascensión to hide for the night. The following day, Mr. Gutiérrez snuck into his home through a back entrance, gathered important documents, and left again with his son. He has not returned to his home since that day.

46. Petitioner E. Gutiérrez spent the next twenty-four hours contemplating his next step. He finally realized that he would have to leave the country because he believed that the Mexican army officials would find him if he went anywhere else in Mexico.

47. On June 16, 2008, Petitioner E. Gutiérrez went with his son to the border crossing facility at Antelope Wells in the state of New Mexico in the United States of America. He spoke with U.S. Border Patrol and Customs officers and told them that he was scared for his life and for the life of his son.

48. The U.S. Border Patrol detained Petitioner E. Gutiérrez for seven and a half months and detained his son for two and a half months. Mr. Gutiérrez is currently seeking asylum in the United States because he does not believe he can return to Mexico without persecution based on the threats made against him and his status as an outspoken journalist.

49. On July 17, 2008, Director General of the CNDH, Fernando Batista Jimenez, sent correspondence to Petitioner E. Gutiérrez at his address in Ascensión stating that the Ministry of National Defense denied that any military operatives conducted an operation at Mr. Gutiérrez'

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<sup>14</sup> See Ex. F.

home on April 4, 2008.<sup>15</sup> In this correspondence, the Director General requested Mr. Gutiérrez to provide testimony or video evidence of the events that occurred in his home. Mr. Gutiérrez did not receive this letter because he was detained in the United States at the time.

50. In February 2009, Petitioner E. Gutiérrez was released from U.S. Customs and Border Patrol custody into the United States pending a judicial determination of his asylum claim.

51. Around October of 2009, Attorney José Juan Alonso asked if Petitioner E. Gutiérrez could return to Ciudad Juárez, Chihuahua to meet with his team in that city. Petitioner E. Gutiérrez, seeking asylum in the United States for fear of what might happen to him in Mexico, refused their request and insisted that the CNDH representative meet with him in El Paso.

52. CNDH representative, José Juan Alonso, agreed to come to Mr. Spector's office and arrived around 6:00 p.m. on that same day. Mr. Alonso offered a proposal to Mr. Spector and Petitioner E. Gutiérrez that if Mr. Gutiérrez would drop his complaint with the CNDH and return to Mexico, they would provide him with two bodyguards for him and his son. Because Mr. Gutiérrez feared for his life and wanted to pursue his complaints against the military officials responsible for threatening him, he refused Mr. Alonso's offer.

53. Between June of 2009 and February of 2011, Petitioner E. Gutiérrez called Mr. Alonso at the CNDH in México, Distrito Federal, about once every one to three months requesting information about his case. Mr. Alonso continually assured Petitioners that they could expect a recommendation from the CNDH within "the next three months."

54. From the information provided, the CNDH conducted little to no activity on this investigation from late 2009 until February 2011. The military and Chihuahua Public Prosecutor never investigated the matter.

55. The CNDH sent a few correspondences to Petitioner E. Gutiérrez in 2009. Despite knowing of his residence in the United States, they continued to send correspondence to his former address in Ascensión.<sup>16</sup>

56. On or around February 16, 2011, Mr. Alonso returned to El Paso to meet again with Petitioner E. Gutiérrez in Mr. Spector's office. He again offered that, if Mr. Gutiérrez would drop his complaint and return to Mexico, the CNDH would provide him and his son with two bodyguards. Mr. Gutiérrez again refused the offer. Mr. Alonso took the testimony of Mr. Gutiérrez regarding the incidents of 2008 during this meeting.

57. Apparently, the CNDH sent several requests to the Secretary of Defense in March of 2011 asking for information regarding the investigation.

58. On June 8, 2011, the CNDH made a final determination regarding Petitioner E. Gutiérrez' complaint made in 2008.<sup>17</sup> In this determination, the CNDH fully recognized that the events of May 2008 in Ascensión, Chihuahua violated and continue to violate Mr. Gutiérrez' human rights under international and national law. The CNDH specifically recognized that, by forcing Petitioners to flee the country, the Mexican military violated the Petitioners' rights to freedom of movement, freedom of residency, and freedom of expression.

59. In its June 8, 2011 response, the CNDH proposed a conciliation with the Military Public Prosecutor that contained the following terms:

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<sup>15</sup> See Ex. G. The date on the correspondence is incorrect. Military operatives actually entered Petitioner Gutierrez' home on May 6, 2008, not on April 4, 2008.

<sup>16</sup> See Ex. H.

<sup>17</sup> See Ex. I.

- a. The Mexican Military Prosecutor should continue its investigation of the incident marked as file no. GN/PALOMAS/04/2009 and should provide its determination to the CNDH.
- b. Internal Control and Affairs Department of the National Secretary of Defense should conduct another administrative investigation to determine which military agents forced the displacement of Petitioner E. Gutiérrez and his son to the United States.
- c. Instructing the Mexican Military to abstain from conducting operations that violate the right of “inviolability of the home and other arbitrary searches of the private property of journalists” with the motivation of creating fear and limiting their right to freedom of expression.
- d. Instructing the Mexican Military to abstain from following and conducting surveillance of journalists.
- e. Instructing the Mexican Military to apply the “Programa de Derechos Humanos S.D.N. 2008-2012” to various elements of its leadership.

60. On June 10, 2011, CNDH representative Mr. Alonso met with Petitioner E. Gutiérrez and his representatives at the office of Mr. Spector in El Paso, Texas. The CNDH representative provided Mr. Gutiérrez with the determination letter of June 8, 2011 and the files of investigations of both the 2005 and 2008 incidents. The files reveal that the CNDH based its entire investigation of the 2008 incident on news articles, one interview with the victim, and one interview with a neighbor in Ascensión. The files contained no indication that the military ever provided any substantive information to the CNDH or that the CNDH required the military to follow up in its investigation of the matter. The CNDH never made available any information nor correspondence from the military investigations to Mr. Gutiérrez.

61. Correspondence in the CNDH file of the 2008 incident also reveals that the Chihuahua Public Prosecutor office never conducted a meaningful investigation. The Chihuahua Public Prosecutor claims that it only sent two citations to Petitioner E. Gutiérrez and, because he never answered, it closed his file.<sup>18</sup> In reality, as stated in, paragraph 42 above, representatives of the office visited Mr. Gutiérrez’ home as part of an investigation the details of which were never revealed to the CNDH.

62. To date, none of the investigating agencies of the 2005 incident completed their investigation. Only in May of 2011, when Petitioner E. Gutiérrez pushed the CNDH to provide him information regarding the 2005 incident, did the CNDH again contact the military investigatory agency and the state prosecutor to question their lack of response in that case.

63. To date, despite the CNDH’s determination in June 2011, agencies with prosecutorial powers (namely, the military and state prosecutors) have undertaken no substantive investigations, arrests, or prosecutions pertaining to the occurrences of May 2008.

64. The CNDH’s June 2011 letter does not remedy Petitioner E. Gutiérrez’ grievances. Instead, the CNDH’s proposed conciliation, three years after the fact, merely asks the Military Public Prosecutor to conduct yet another investigation of the incident and declares that the Mexican military should not violate the law. The CNDH provides no guidelines for this new investigation and does not guarantee any procedural transparency in this new investigation.

### **C. Effect of Mexican Military Aggressions On Petitioners**

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<sup>18</sup> See Ex. J.

65. As a result of the abuses described above, Petitioners E. Gutiérrez and O. Gutiérrez sought refuge in the United States, where they were detained as prisoners. Throughout their entire detention, they were not allowed to see each other. After that, Petitioner O. Gutiérrez was only able to visit his father once every few weeks. Isolated and segregated for seven and a half months, both victims suffered greatly from their separation and detention.

66. Moreover, Petitioner O. Gutiérrez was detained as a minor. Because of the abuses incurred by him and his father, he suffered great stress and psychological damage during the many months that he was separated from his father in detention.

67. Petitioner O. Gutiérrez was unable to continue his studies in México and left the only life he knew in order to flee from the abuses of the Mexican military. He has left his friends, family, and culture in México without hope of a return.

68. Petitioners E. Gutiérrez and O. Gutiérrez continue to seek refuge in the United States because of Petitioner E. Gutiérrez' outspoken stance on Mexican military abuses and because of the complaints he filed against Mexican military officials in 2005 and 2008. He fears for his life and the life of his son because his security in México is not secure. The impunity that has surrounded the threats on his life makes it impossible for him to return to his country of origin.

#### **IV. JURISDICTION AND ADMISSIBILITY**

69. The Inter-American Commission on Human Rights has competence to receive and act on this Petition in accordance with articles 1.2(b), 18, 20(b), and 24 of the Commission's Statute. This Petition is also admissible under Article 44-46 of the Convention.

##### **A. Jurisdiction of the Commission**

70. The Petitioners are authorized under Article 44 of the American Convention to file this Petition because this Commission has *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* jurisdiction to hear this case.

71. First, the alleged victims are individuals whose rights are protected under the American Convention. Therefore, this Commission has *ratione personae* competence to review this Petition.

72. Second, the Commission also has *ratione materiae* competence because the charges raised in this Petition refer to violations of rights protected by the American Convention on Human rights (ACHR).

73. Third, México ratified the American Convention in March of 1981. Because the State Party had the obligation to respect the rights protected in the American Convention on the dates that the events of this Petition took place, the Commission also has *ratione temporis* competence.

74. Finally, this Petition alleges violations of rights protected under the American Convention that occurred within the territory of México which is a State Party to the Convention. Therefore, the Commission has *ratione loci* competence to hear this Petition.

##### **B. Exhaustion of Domestic Remedies**

75. Petitioners E. Gutiérrez and O. Gutiérrez are not required to show an exhaustion of domestic requirements under Convention Article 46(1) because Convention Article 46(2)(b) and (c) exceptions apply to this Petition.

76. The Mexican state prevented Petitioners from accessing and exhausting effective remedies to his violations. México also provoked an unjustified delay in resolving all complaints filed by Petitioner E. Gutiérrez in the above-described incidents.

77. In 2005 and 2008, Petitioner E. Gutiérrez filed several complaints with state and federal investigative bodies regarding the threats against him and his family made by military officials including an unjustified search of his home. The complaints are as follows:

- Chihuahua State Public Prosecutor, February 15, 2005: Complaint No. E-202/2005.
- CNDH, February 11, 2005: Complaint No. 2005/694/CHIH/5/SQ.
- Chihuahua State Public Prosecutor, May 8, 2008: Complaint No. Unknown.
- CNDH, May 15, 2008: Complaint No. CNDH/5/2008/2331/Q.

78. The fact that certain procedures may exist in the Constitution or by law is not enough to show that the State Party provided Petitioners a remedy. “A remedy, which proves illusory because of ... the particular circumstances of a given case, cannot be considered effective .... [For example], when the Judicial Power lacks the necessary independence to render impartial decisions or the means to carry out its judgments ... the alleged victim is denied access to a judicial remedy.”<sup>19</sup>

79. Both state and federal agencies responded to Petitioners’ complaints by presumably conducting preliminary investigations of the events of this case. Nonetheless, their response was slow and the complaints remain unresolved. For example, despite the immediacy of the threats against Petitioner E. Gutiérrez by Mexican military officials in 2005, the Chihuahua Public Prosecutor did not even assign an investigator to the case in the three months following his complaint. No record of any investigation by that agency was ever produced to Mr. Gutiérrez or his attorney. This lack of action constitutes a “presumed unwarranted delay, since there were various persons implicated in the acts denounced, who had been identified by witnesses,” and not one of them has been tried.<sup>20</sup>

80. At present, six years have passed since Petitioner E. Gutiérrez filed his first complaint with the Chihuahua state prosecutor and his first complaint with the CNDH. To this day, six years later, none of the prosecuting agencies have even provided a final determination regarding any of the complaints filed by Petitioner E. Gutiérrez against Mexican military officers in 2005 or 2008.<sup>21</sup> No one has been prosecuted, punished, or subject to a disciplinary proceeding for any of the threats made against Mr. Gutiérrez over the last six years.<sup>22</sup>

81. The CNDH, in its proposed conciliation in 2005, merely suggested that the Mexican Military Comptroller investigate the incidents raised in Petitioner E. Gutiérrez’ complaint, despite the fact that this Commission has recognized that military jurisdiction is not an

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<sup>19</sup> Inter-American Court on Human Rights, “*Judicial Guarantees in States of Emergency*,” Arts. 27(2), 25 and 8 American Convention on Human Rights, Advisory Opinion OC-9/87, October, 1987, para. 24.

<sup>20</sup> *Jesús Angel Gutiérrez Olvera v Mexico*, Petition 497-03, Inter-Am. C.H.R., Report No. 147/10, para. 45, November 1, 2010.

<sup>21</sup> *Id.* (finding that a Petition fell under the Exceptions of Art. 46(2)(b) and (c) when the State provided no information on the status of investigations of several disappearances in over eight years).

<sup>22</sup> The fact that the Mexican state still has open investigations regarding the events in this petition is not persuasive in proving that the state is willing to fully solve the case. “Quite the contrary, the IACtHR considers that if the Mexican authorities have sufficient elements to continue the investigation, which does not in the least appear to be complex in nature, its duration for more than eight years since the assassination took place is clearly unreasonable.” *Victor Manuel Oropeza v. México*, Case 11.740, Inter-Am. C.H.R., Report No. 130/99, para. 21, November 19, 1999.

appropriate forum for adjudging state agents' human rights violations.<sup>23</sup> Though the CNDH provided a preliminary determination of Mr. Gutiérrez' 2008 complaint and found that human rights violations had occurred, it again ceded investigatory authority back to the Mexican military.

82. The Inter-American Court has held that the investigation of alleged human rights violations, as is the case here, by an organ lacking sufficient independence does not constitute an effective remedy.<sup>24</sup> Moreover, the CNDH's actions demonstrate that the National Commission does not have the "means to carry out its judgments."<sup>25</sup> Otherwise, the CNDH would not have turned the investigation of the 2008 incident back to the Mexican military when the CNDH investigators determined in 2011 that agents of the Mexican military committed the human rights violations that are the subject of this Petition.

83. Finally, the unwillingness of the Mexican government to resolve Petitioner E. Gutiérrez' case forced him and his son to flee the country before they could fully pursue domestic remedies; as is required under the Convention. This Commission has held that when a victim is in forced exile "due to the State's presumed failure to protect their rights," the victim's petition falls under the Art. 46(2) exceptions.<sup>26</sup> The Inter-American Court has also held that petitioners need not continue exhausting domestic remedies when the pursuit of such remedies causes intimidation against them and/or their attorneys.<sup>27</sup> Mr. Gutiérrez would have risked the lives of both himself and his son if they had remained in México and awaited the resolution of the investigations by the CNDH, the Chihuahua Public Prosecutor, and the Mexican military.

84. Therefore, because the Mexican state has denied Petitioner E. Gutiérrez access to effective remedies and has provoked unjustified delay in domestic proceedings, American Convention Article 46(2)(b) and (c) apply to this Petition and this Petition is admissible.

### C. Timeliness

85. First, in effect, the present Petition complies with the time requirements established under Article 46(1)(b) because the violations described are continual violations.

86. Second, if a Petition falls under the exceptions established in Article 46(2) of the American Convention, the Petitioner need only show that he filed his Petition within a reasonable time pursuant to Article 32 of the Commission's Rules of Procedure.

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<sup>23</sup> *Case of the Chéngue Massacre, Colombia*, Petition 1268-05, Inter-Am. C.H.R., Report No. 45/07 (Admissibility), para. 49, July 23, 2007. See also *Luis Gonzalo "Richard" Vélez Restrepo and Family v. Colombia*, Petition 864-05, Inter-Am. C.H.R., Report No. 47/08 (Admissibility), para. 74, July 24, 2008 (finding that "military criminal justice can only constitute an adequate forum to judge military personnel for the commission of crimes or minor offenses which by their nature violate legal assets specific to the military order.").

<sup>24</sup> Inter-American Court on Human Rights, "Judicial Guarantees in States of Emergency," Advisory Opinion OC-9/87, para. 24.

<sup>25</sup> *Id.* See also *Case of Velásquez Rodríguez*, Sentence of July 29, 1988, Inter-Am. Ct. H.R. (Ser. C) N° 4 (1988) para. 66 (finding that procedural requirements are ineffective if they are "powerless to compel the authorities.").

<sup>26</sup> *Luis Gonzalo "Richard" Vélez Restrepo*, Petition 864-05, Report No. 47/08, para. 78.

<sup>27</sup> *Case of Godínez Cruz*, Sentence of January 20, 1989, Inter-Am. Ct. H.R. (Ser. C) N° 5 (1989) para. 66; *Case of Fairén Garbi y Solis Corrales*, Sentence of May 15, 1989, Inter-Am. Ct. H.R. (Ser. C) N° 6 (1989), para. 102.

87. Here, as explained *supra*, Sec. IV(B), the exceptions in Article 46(2)(b) and (c) of the American Convention apply. Moreover, Petitioners filed this complaint within a reasonable time because, as a result of the actions of Mexican military officials and the lack of response by the Mexican agencies responsible, Petitioners spent several years attempting to resolve their case while simultaneously seeking asylum in the United States of America. Finally, the ordinary criminal and civil proceedings are still pending and the petition was lodged within six months of Petitioner E. Gutiérrez' last contact with a CNDH representative on June 10, 2011.

88. Therefore, the Commission should find that Petitioners filed this Petition in a reasonable time and in compliance with the requirements of the Convention.

#### **D. Duplication of Proceedings**

89. The subject of this Petition is not pending in any other international proceeding for settlement.

### **V. HUMAN RIGHTS VIOLATIONS**

90. México is internationally responsible for violating rights that are affirmed in the American Declaration of the Rights and Duties of Man and in other provisions of international human rights law. OAS member states, such as México, are bound to uphold the rights affirmed in the American Convention on Human Rights and the American Declaration on the Rights and Duties of Man.<sup>28</sup> Therefore, México is internationally responsible, and responsible to this Commission, for the following violations of the ACHR.

#### **A. Article 4 and 5: Right to Life and Personal Integrity, and Personal Liberty**

91. Article 4 and 5 of the American Convention guarantee the right of individuals that the State will respect their life and their personal integrity through appropriate laws. Article 7 guarantees the right to personal liberty.

92. As explained above, the Mexican State, through its military officials, engaged in a campaign of aggressive threats, intimidation, and harassment against Petitioners E. Gutiérrez and O. Gutiérrez over the period of several years. The Mexican state has treated these threats with impunity and has failed to investigate or provide sufficient protection to Petitioner E. Gutiérrez and his family in response to these threats. Therefore, because the Mexican state has refused to guarantee Petitioners E. Gutiérrez and O. Gutiérrez' rights to life, personal integrity, and liberty, it has violated Article 4, 5, and 7 of the American Convention.

#### **B. Article 13: Freedom of Thought and Expression**

93. Article 13(3) of the American Convention requires all State Parties to refrain from restricting "by indirect methods or means" individuals' right of expression. Article 13(2) states that a State Party may not engage in "prior censorship" of an individuals' right.

<sup>28</sup> *Interpretation of the American Declaration of the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89 of July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) N° 10 (1989), paras. 42, 43.

94. First, the direct threats made by military leaders to Petitioner E. Gutiérrez in 2005 in response to his articles forced him to self-censor his reporting.<sup>29</sup> Such self-censorship due to state actions constitutes a violation of Article 13 of the American Convention.<sup>30</sup>

95. Second, the threats made against Petitioner E. Gutiérrez' life in May and June 2008 not only forced him to censor his work, but made it necessary for him to abandon his work as a journalist in México and flee to the United States. He has been unable to pursue his profession as a journalist in his home country precisely because of retaliatory acts made by Mexican military officials against his life in response to his news reports. Therefore, because the threats and intimidation made by state actors deny Mr. Gutiérrez from exercising his right to expression in his home country, México is in violation of Article 13 of the American Convention.<sup>31</sup>

### C. Articles 1(1), 8 and 25: Rights to Judicial Guarantees and Protection

96. The right to judicial protection requires that states provide their citizens "a right to simple and prompt recourse to competent courts or tribunals for protection against fundamental rights recognized by laws ... even if [such violations] may have been committed by persons acting in the course of official duties."<sup>32</sup> Such remedies must comport with the rules of due process of law.<sup>33</sup> The lack or denial of an efficient judicial remedy is itself a violation of the substantive right to judicial protection.<sup>34</sup> As part of its obligations under these Articles, "the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."<sup>35</sup> The Mexican state has violated Petitioners E. Gutiérrez and O. Gutiérrez' rights to judicial guarantees and protection for the following reasons.

97. First, Petitioner E. Gutiérrez' efforts in the Mexican judicial system have been met by dilatory tactics on the part of the government investigators. The CNDH has only acquiesced to the improper, insufficient, and non-transparent investigations of both the Chihuahua Public Prosecutor and military investigative authorities.

98. Second, the Mexican state gave investigative authority back to the entity responsible for the original human rights violations. The CNDH, in response to complaint 2005/694/CHIH/5/SQ, merely proposed a conciliation that returned investigative power back to the Military Comptroller and the state Public Prosecutor. In its determination letter of June 8, 2011, the CNDH again proposed a conciliation with the Mexican military ceding investigative

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<sup>29</sup> This is not an isolated experience. Other journalists throughout México have used self-censorship as a way of life as violence against journalists increases. See Benoît Hervieu, *Inquiry Report: Organized Crime Muscling in on the Media*, Reporters Without Borders, February 24, 2011, p. 3, available at <http://en.rsf.org/muscling-in-on-the-media-a-24-02-2011,39608.html>.

<sup>30</sup> Luis Gonzalo "Richard" Vélez Restrepo, Petition 864-05, Report No. 47/08, para. 87.

<sup>31</sup> See *Manoel Leal De Oliveira v. Brazil*, Case 12.308, Inter-Am.C.H.R., Report No. 37/10, para. 150, March 17, 2010 ("By failing to fulfill its duty to investigate the murder, the [state] violated the right to freedom of thought and expression to Manoel's detriment.").

<sup>32</sup> ACHR, Art. 25. (emphasis added)

<sup>33</sup> ACHR, Art. 8(1)

<sup>34</sup> Inter-American Court on Human Rights, "Judicial Guarantees in States of Emergency," Advisory Opinion OC-9/87, paras. 27 and 28.

<sup>35</sup> *Case of Paniagua Morales et al.*, Inter-Am. Ct. H.R., Judgment of March 8, 1998, para. 173.

power back to the military investigative authorities. As this Commission has stated, “[w]hen the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised.”<sup>36</sup> In fact, this Commission recently came to the same conclusion regarding the effectiveness of internal investigations of Mexican military human rights violations in the case of Miguel Orlando Muñoz Guzman. In that case, this Commission stated that “the [Mexican military prosecutor’s office] lacks, by definition, the necessary independence and autonomy to carry out an impartial investigation of human rights violations allegedly committed by members of the armed forces.... [T]he investigation by the [Mexican military prosecutor’s office] of human rights violations allegedly perpetrated by Mexican military personnel is itself a violation of the American Convention.”<sup>37</sup> It was inappropriate, then, and in violation of the American Convention for the CNDH, to refer investigation of Petitioner E. Gutiérrez’ complaints against military officers back to Mexican military investigative authorities.

99. Third, the Mexican state failed to fully and effectively investigate any of Petitioner E. Gutiérrez’ complaints. This Commission has found that, when states do not seriously investigate occurrences of human rights violations committed by state actors, the violating individuals are aided, in a sense, by the government, thereby making the State responsible on an international plane.<sup>38</sup> In that case, the state had interviewed 25 people and then archived the case.<sup>39</sup> Here, in attending to Petitioner E. Gutiérrez’ complaints of the occurrences of 2005, not one agency conducted any meaningful investigation or interviews. In attending to Mr. Gutiérrez’ complaints of the 2008 occurrences, the CNDH only interviewed the victims and one other person during their three-year investigation.

100. Fourth, the investigations of the 2008 complaints were marred with willful irregularities. First, as mentioned in, *supra*, paragraph 24, the CNDH forwarded the incorrect name of one of the aggressors to both the state and military investigative authorities. Moreover, as mentioned in, *supra*, paragraph 49, the Mexican military response to the CNDH denied that any operation occurred on May 6, 2008 because no Mexican forces were in the area on April 4, 2008. There is no additional correspondence from the CNDH remedying these errors. The definitive conclusion of an investigation based on such blatant errors evidences willful negligence.

101. Fifth, the Mexican state failed to fully and effectively resolve any of Petitioner E. Gutiérrez’ complaints. In response to both complaints 2005/694/CHIH/5/SQ and CNDH/5/2008/2331/Q, the CNDH did not supervise the state and military investigations nor did it provide any recommendation regarding how the government bodies could cure any defects in their investigations.

102. Regarding Petitioner E. Gutiérrez’ 2005 CNDH complaint, though the CNDH apparently “resolved” a “conciliation” of Mr. Gutiérrez’ complaint, it failed to provide him with any information regarding the procedure or resolution of that conciliation.<sup>40</sup> Moreover, the January 31, 2006 correspondence from the CNDH to Mr. Gutiérrez briefly states that the Mexican military did not determine that its officers were involved in the 2005 incident, but fails

<sup>36</sup> *Manuel Stalin Bolaños Quiñonez*, Case No. 10.580 (Ecuador), Inter-Am. C.H.R., Report No 10/95, Annual Report of the Inter-Am. C.H.R. 1995, para. 48.

<sup>37</sup> *Miguel Orlando Muñoz Guzman*, Case No. 12.130, Report No. 2/06 (Merits), para. 85.

<sup>38</sup> *Manoel Leal De Oliveira*, Case 12.308, Report No. 37/10, para. 114.

<sup>39</sup> *Id.* at paras. 15-24.

<sup>40</sup> See Ex. C.

to even provide Mr. Gutiérrez the name of the investigator in charge at the Chihuahua Public Prosecutor's office.<sup>41</sup>

103. Regarding Petitioner E. Gutiérrez' 2008 CNDH complaint, the CNDH did find that violations of his rights occurred. Nonetheless, the proposed conciliation merely cedes investigatory authority back to the very same organization that committed the human rights violations.

104. The CNDH's lack of response and Petitioner E. Gutiérrez' inability to gather information regarding his own complaints is not unique to this case. Human rights organizations have found it almost impossible to access information regarding proceedings in military proceedings.<sup>42</sup> Further, the CNDH has provided recommendations to very few complaints regarding human rights violations by military officers. For example, of the 1,230 complaints made in 2008, the CNDH only produced recommendations for 14 cases.<sup>43</sup>

105. Finally, an essential element of effectiveness is timeliness. The right to judicial protection requires that courts adjudicate and decide cases expeditiously. "There is no question but that the duty to conduct a proceeding expeditiously and swiftly is a duty of the organs entrusted with the administration of justice."<sup>44</sup> Judicial remedies are ineffective if they come too late. In this case, the response and proceedings of both the Chihuahua Public Prosecutor and the CNDH were unduly delayed. The investigation of the 2005 incidence was never fully investigated and has not been closed even now, six years later. The CNDH only re-initiated the investigation in 2011 after extensive advocacy by Petitioner E. Gutiérrez and his attorney. The 2008 investigation continues three years later. This delay rendered those proceedings ineffective to protect Petitioner E. Gutiérrez from acts of military authorities that violated his rights.<sup>45</sup>

106. The Mexican state failed to fully resolve and failed to provide Petitioner E. Gutiérrez with any final determination of his complaints over the last six years. Therefore, because the Mexican state failed to provide effective judicial remedies to Petitioner E. Gutiérrez for the aggressions inflicted on him and his family by the Mexican military, México violated Articles 8 and 25 of the American Convention.

#### **D. Article 22: Freedom of Movement**

107. The Mexican military waged a campaign of intimidation and harassment against Petitioner E. Gutiérrez. This intimidation caused Petitioners E. Gutiérrez and O. Gutiérrez to flee their country for fear of their lives. They continue to live in the United States three years after several Mexican military officers attempted to kill them. Forced exile as a result of attacks and threats constitutes a violation of Petitioners' right to freedom of movement enumerated in Article 22 of the American Convention.<sup>46</sup>

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<sup>41</sup> See Ex. D.

<sup>42</sup> Amnesty International, *New Reports of Human Rights Violations by the Military*, pp. 9-10, December, 2009, available at <http://www.amnesty.org/en/library/asset/AMR41/058/2009/es/e1a94ad6-3df1-4724-a545-f0b93f39af69/amr410582009en.pdf>.

<sup>43</sup> *Id.* at p. 9.

<sup>44</sup> Case 11.218 (Nicaragua), Inter-Am. C.H.R., OEA/Ser.L/VII.98, Doc. 7 rev. at 692, paras. 133-34 (1998).

<sup>45</sup> Case 10.580 (Ecuador), Inter-Am. C.H.R., OEA/Ser.L/VII.91, Doc. 7 at 76, paras. 5-6 (1996).

<sup>46</sup> Luis Gonzalo "Richard" Vélez Restrepo, Petition 864-05, Report No. 47/08, para. 88.

## E. Article 19: Rights of the Child

108. The Mexican government has an obligation to ensure that “every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

109. The Inter-American Court has found that when a State Party fails “to take adequate prevention and protection measures” in situations where minors are in danger, it violates Article 19 of the Convention.<sup>47</sup> When children are victims of human rights violations committed by the State, the State must apply an even higher standard of scrutiny in investigating the seriousness of the actions that may have violated the rights of those children.<sup>48</sup>

110. In considering the obligation to adopt “measures of protection” to protect children, the Inter-American Court looks to the Convention on the Rights of the Child.<sup>49</sup> Article 2 of the Convention on the Rights of the Child provides that State Parties shall ensure that children are “protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents.” Similarly, Article 13 of the Protocol of San Salvador, to which México is a ratifying signatory, states that education should be made “generally available and accessible to all by every appropriate means.” Article 14 of the Protocol of San Salvador dictates that all ratifying states must “recognize the right of everyone; to take part in the cultural and artistic life of the community.”

111. Here, the state, federal, and military agencies to which Petitioner E. Gutiérrez complained knew that the threats made against the Petitioners also affected Petitioner O. Gutiérrez, a minor. Nonetheless, none of these government actors took any steps to remedy, investigate, or resolve the matter or protect Petitioner O. Gutiérrez from additional violence.

112. Petitioners found themselves in a situation of armed internal conflict in 2008. As shown in, *supra*, paragraphs 10-15, the situation in Northern Chihuahua was and continues to be one of armed internal conflict between Mexican federal forces and armed groups. This conflict has been accompanied by systematic practice of human rights violations carried out by State agents. In situations of armed conflict, the State is required by Article 19 of the American Convention to ensure the special protection and care of children.<sup>50</sup> The Mexican government has been aware that the aggressions complained of in 2005 and 2008 directly affected a minor. Nonetheless, the government has never recognized its heightened duty to investigate and protect against aggressions taken against Petitioner O. Gutiérrez in his status as a minor.

113. Moreover, the acts of Mexican agents caused Petitioner O. Gutiérrez to leave his culture, his family, and his education in México and travel to the United States. Once there, he was detained against his will for almost three months. In the United States, he has suffered

<sup>47</sup> *Case of Villagrán-Morales et al v. Guatemala*, Judgment (Merits) of November 19, 1999, Inter-Am. Ct. H.R. (Ser. C) N° 63 (1999), Para. 181 (also finding that the State violated the rights of children when they were “the object of acts of violence” and the party failed to “investigate and end the abuse” and “punish those responsible.”). See also *Jailton Neri Da Fonseca v. Brazil*, Case 11.634, Inter-Am. C.H.R., Report No. 33/04 (Merits) para. 80, March 11, 2004 (finding that state must not only provide “children care and protection ... but also means recognizing, respecting, and guaranteeing the individual personality of the child, as a holder of rights and obligations.”).

<sup>48</sup> *Case of Gómez-Paquiayuri Brothers v. Perú*, Judgment (Merits, Reparations and Costs) of July 8, 2004, Inter-Am. Ct.H.R. (Ser. C) N° 110 (2004), para. 170.

<sup>49</sup> *Id.* at para. 164.

<sup>50</sup> *Id.* at paras. 158-173.

separation from his own father, has not had the right to pursue his education in México, and is not able to visit or participate in the life of his family in México. He is unable to return to México for fear of what could become of him and his father at the hands of the Mexican military.

114. Therefore, the actions of Mexican military agents and the ensuing impunity described above constitute distinct violations of Petitioner O. Gutiérrez' rights under Article 19 of the American Convention.

## **VI. PETITION**

115. Based on Art. 44-51 of the American Convention, the Petitioners respectfully request that the Commission:

- a. Open this case and request that the Mexican state provide the relevant information regarding the facts of this Petition;
- b. Deem this case admissible and find that México has violated Petitioners' rights enshrined in Articles, 1(1), 4, 5, 8, 13, 19, 22, and 25 of the American Convention; and
- c. Formulate the appropriate recommendation for México to resolve this matter.

116. Petitioners respectfully request that the Commission send all correspondence to the offices of:

- a. Paso del Norte Civil Rights Project, 1317 East Rio Grande Avenue, El Paso, Texas 79902, (tel) (915) 532-3799, (fax) (915) 532-8892, [chrisbenoit@texascivilrightsproject.org](mailto:chrisbenoit@texascivilrightsproject.org); and
- b. Carlos Spector, 1430 East Yandell Avenue, El Paso, Texas 79902, (tel) (915) 544-0441, (fax) (915) 544-1814, [spectorimm@yahoo.com](mailto:spectorimm@yahoo.com).

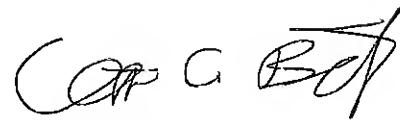
## **VII. VERIFICATION AND SIGNATURES**

117. The below persons are authorized to sign this petition. These representatives attest to the truthfulness of the facts set forth in this petition.

118. All petitioners wish that the Commission withhold their identity and addresses from the State of México.

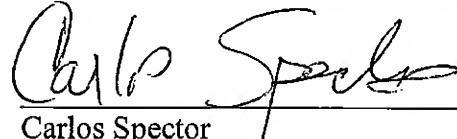
Dated: July 8, 2011

Respectfully submitted by the undersigned, as counsel for the individual petitioners under the provisions of Article 23 of the Commission's Rules of Procedure:



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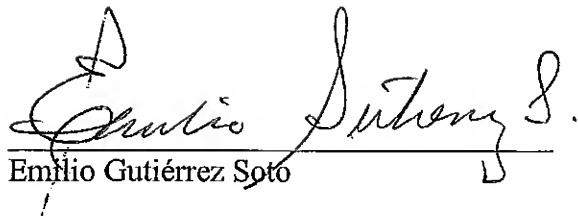
Christopher Benoit  
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PETITIONER SIGNATURES



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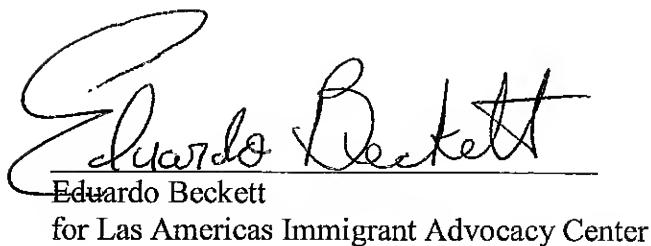
Emilio Gutiérrez Soto



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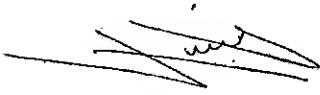
Eduardo Beckett  
for Las Americas Immigrant Advocacy Center



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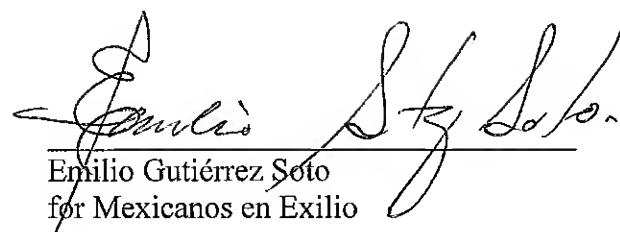
Ruben Garcia

for Annunciation House, Inc.



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Jean-François Julliard  
for Reporters San Fronti  s



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Emilio Guti  rrez Soto  
for Mexicanos en Exilio



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Elizabeth Flores  
for Pastoral Obrera



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Maria Jimenez  
for Alianza Mexicana

The Petitioners thank the Commission for its careful attention to this pressing matter.